far as contended for on behalf of the Public Prosecutor would, in our opinion, be going beyond the fair sense of the language employed by the Legislature. If the person who pays the bribe is also the person who corrupts the public officer into receiving it, then the tests to be applied to his evidence are the same now as before. Not by reason of the fact that he paid the money, but because he played a part in the transaction not covered by the exception provided in sub-section (3) of the Prevention of Corruption Ordinance.

When a matter is brought before this Court under section 34 of the Courts Ordinance, it is required to be treated as a re-hearing of the appeal. At the hearing before us, however, the Deputy Public Prosecutor intimated that in all the circumstances he would not argue in support of the conviction.

That being so, and in view of the fact that inadmissible evidence was admitted at the trial, we do not propose to discuss the merits of this case, and we make no order on the Reference. The order made by Taylor, J., will, therefore, stand.

No order.

CHUA SEK LENG v. R.

[A. Cr. J. (Spenser Wilkinson, J.) November 26, 1952]

[Penang — Criminal Appeal No. 39 of 1952]

Criminal Procedure Code (Cap. 21), ss. 249, 265 and 448 — Questions put by Magistrate to accused — Failure to record questions — Irregularity.

This was an appeal from the conviction of the appellant on a charge under the Customs Enactment. The grounds of appeal were: (1) the learned Magistrate was wrong in questioning the appellant who elected to give a statement from the dock; (2) the learned Magistrate based his finding of guilty partly on answers to such questions.

Held: (1) the learned Magistrate was wrong in that he did not comply with section 265 of the Criminal Procedure Code which requires a Magistrate to record the questions asked as well as the replies thereto; (2) in this case the failure to write down the questions and answers in no way prejudiced the appellant and was therefore a mere irregularity curable under section 448 of the Code.

[**Editorial Note:** Special attention of the Magistrates is drawn to that part of this judgment where His Lordship advises them to make a note to section 249 in their copies of the Criminal Procedure Code, drawing special attention to provisions of section 265.]

CRIMINAL APPEAL.

G. H. Conaghan for the appellant.

C. M. Sheridan (D.P.P.) for the respondent.

Spenser Wilkinson, J. : — The appellant was convicted by the Magistrates' Court, Butterworth of an offence under section 114 (i) (f) of the Customs Enactment and was fined $1,500 or six months' rigorous imprisonment in default.

The first ground of appeal was that the learned Magistrate was wrong in questioning the appellant who elected to give a statement from the dock and the second ground was that the learned Magistrate based his finding of guilty partly on answers to such questions.

Dealing with the second ground first I do not think the Magistrate in fact based his judgment on the answers given by the accused to his questions. I think it is clear reading the grounds of judgment as a whole and the statement given by the accused to the Customs Officer that it was the admissions in the statement to the Customs Officer upon which the learned Magistrate based his decision.

The first ground of appeal raises a point of more importance. The appellant when called on for his defence elected to make a statement. The record then states :—

"Chua Sek Leng, affirmed, states in Teochew"

but I am informed that this is a clerical error and that the appellant was not in fact affirmed. At the conclusion of the appellant's statement from the dock the learned Magistrate asked him certain questions. He did not, however, record the questions but only the replies thereto. I assume that in putting the questions as he did the learned Magistrate was purporting to act under section 249 of the Criminal Procedure Code, but in so doing he appears to have overlooked the provisions of section 265. I do not really think that the Magistrate can be blamed for this, because there is no reference in section 249 to section 265 and, unless his attention was specifically drawn to the later section it would be very easy to overlook it. In section 256 of the F.M.S. Criminal Procedure Code which is the equivalent of our section 249 there are two additional sub-sections which reproduce in effect our section 265. Under that Code, therefore, when a Magistrate is making use of section 256 he has the whole law on the subject before him, whereas under the Straits Code when the Magistrate looks at section 249 there is nothing there to indicate that he must write down the whole of the questions put, together with the answers thereto and that he must read the questions and answers back to the accused and then sign the result. Section 265, however, makes this obligatory, and Magistrates would be well advised to make a note to section 249 in their copies of the Criminal Procedure Code, drawing special attention to the provisions of section 265.

I am satisfied that in the present case the failure to write down the questions and answers in no way prejudiced the accused and is, therefore, a mere irregularity curable under section 448 of the Code. The questions appear to have been put with a view to enabling the accused to explain some of the statements made in his statement to the Customs Officer and such admissions as are contained in his answers to the Court had been made in his statement to the Customs Officer which had already been given in evidence.

I therefore dismissed the appeal against the conviction, whereupon the learned Counsel for the appellant applied for an order that the fine be paid by instalments. Whether such an application was made to the learned Magistrate in the Court below I do not know; but in view of the fact that the appellant has undergone more than one trial I acceded to this application and ordered that the fine be paid by instalments, $500 to be paid forthwith and the balance to be paid by monthly instalments of $200 commencing from the 1st January, 1953.

Appeal dismissed.

ABDUL HAMID BIN MOHAMED v. PUBLIC PROSECUTOR.

[A. Cr. J. (Sir Charles Murray-Aynsley, C.J., Singapore, Wilson and Briggs, JJ.) December 29, 1952]

[K.L. — F.M. Criminal Appeal No. 88 of 1952]

Prevention of Corruption Ordinance, 1950, ss. 3 and 13 — Whether witnesses are worthy of credit.

This was an appeal arising out of the conviction of the appellant on a charge under the Prevention of Corruption Ordinance. The appellant was a Police Sergeant who at material times was employed in the Traffic Branch with the particular duty of dealing with private cars used illegally for the conveyance of passengers for hire. It was alleged that on two occasions he had taken bribes to release cars which had been detained on suspicion that they had been so used. The case against the appellant rested on the evidence of the persons who gave the bribes. The learned Chief Justice who as the trial Judge, held that it was the appellant who solicited the bribes and it was not the witnesses who in the first place offered them. He therefore held that section 13 of the Prevention of Corruption Ordinance was applicable and that the witnesses were not unworthy of credit.

Held: (Wilson and Briggs, JJ., Sir Charles Murray-Aynsley, C.J., dissenting): (1) there was evidence to support the findings of the learned Chief Justice that it was the appellant who took the initiative by demanding the bribes and it was not the witnesses who in the first place offered them; (2) the learned Chief Justice was right in holding that section 13 of the Prevention of Corruption Ordinance applied and in holding that the witnesses were persons who should not be presumed to be unworthy of credit.

Case referred to:—

(1) *Daimon bin Banda v. Public Prosecutor* p. 23 *ante;* (1951) M.L.R. 97.

COURT OF APPEAL.

F. G. Charlesworth for the appellant.

J. D. Peterkin (D.P.P.) for the respondent.

The facts sufficiently appear from the judgment.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J., (S.) : — This case arose out of a charge under section 3(a) of the Prevention of Corruption Ordinance (No. 5 of 1950) for which the appellant was convicted and sentenced. The facts were, briefly, as follows:—

The appellant was a Police sergeant who at material times was employed in the Traffic Branch with the particular duty of dealing with private cars used illegally for the conveyance of passengers for hire. It was alleged that on two occasions he had taken bribes to release cars which had been detained on suspicion that they had been so used.

As frequently happens in these cases, the prosecution had to rely on the evidence of accomplices. This by itself would not, of course, have of necessity been fatal, provided that the learned Judge had sufficiently directed his mind to the question. In the present case the learned Judge relied on sub-section (3) of section 13 of the same Ordinance. He used the following words:—

"I have been referred to the case of **Daimon bin Banda** v. P. P.[1], where it was held that the effect of sub-section (3) of section 13 of the Prevention of Corruption Ordinance 1950 is that, in corruption cases a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made or caused to be made an improper payment. It is pointed out that if the giver of the bribe has, for example, actively corrupted a public officer then he must be treated as an accomplice. On these charges it was the accused who solicited the bribe and not Yap Choy or the drivers who actively corrupted him."

Substantially this appeal is concerned with the question whether this is a correct interpretation of the sub-section and whether it is properly applied in view of the facts in this case.

It is not easy to interpret the sub-section. Clearly it is intended as a modification of illustration (b) of section 114 of the Evidence Ordinance. The section itself deals with inferences of fact and illustrations (a) and (b) are merely typical instances of inferences of fact that a Court may draw. Later on it is pointed out that in certain circumstances the inference should not be drawn and gives a rather far-fetched example of such a case. But in any case it is not a technical matter but a rule of practice, which is the result of practical experience. It is hard to see how an accomplice could be presumed to be more credible in a case under the Ordinance in question than in any other case. If taken quite literally it would mean nothing